IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 300 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANKIT SIZERS PVT. LTD

Versus

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Appearance:

1. COMPANY PETITION No. 300 of 2003

MR PAVAN S GODIAWALA for Petitioner No. 1

MR JITENDRA MALKAN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 09/02/2005

ORAL JUDGEMENT

1. This is a petition filed by the petitioner company for sanctioning of scheme of Amalgamation of Ankit Sizers Pvt. Ltd. (the transferor company) with High Tech Weaves (India) Pvt. Ltd., (the transferee

company) under sec. 391 read with section 394 of the Companies Act, 1956.

2. The petitioner company is a private company and is engaged in the business of manufacturing, dealing, trading in natural and synthetic and man made fiber clothes and yarns since its incorporation. The transferee company namely High Tech Weaves (India) Pvt. Ltd. is also engaged in the business of manufacturing, dealing, trading in natural and synthetic and man made fiber clothes and yarns since its inception. Both the companies are private companies and are closely run and managed by the same management and engaged in the similar business. The Amalgamation is proposed for sinergic advantages. The petition gives details of advantages that would flow by virtue of amalgamation of this company. Vide order dated 18.11.2003 passed in Company Application NO. 527/2003, meeting of share holders and the creditors were dispensed with as they unanimously gave their consent for approval of scheme of amalgamation. The said consent letters were put on record.

3. The petition was admitted by this court on 25.11.2003 and after the petition was admitted, the same was duly advertised in news papers being "Indian Express: Vadodara edition and "Gujarat Mitra" Surat edition. Publication in the Government Gazette was dispensed with, as directed by the court in the order dated 25.11.2003. Notice was also issued to the Central Government through Regional Director, Department of Company Affairs and to the Official Liquidator with a permission to engage Chartered Accountant to enable him to file his report.

4. In response to the notice issued to the Regional Director, Mr. JM Malkan ld. Sr. Standing Counsel appeared for the Central Govt. and produced letter dated 10.8.2004 received from the Regional Director, which was taken on record. The Regional Director has observed in his letter that the exchange ratio of 10:1 viz. 1 share of Rs. 100/- each of transferee company against 10 shares of Rs. 10/- each of transferor company has been arrived at by including share application money as "Reserve & Surplus/Paid Up Capital" to arrive at net worth. As the company has informed that they would be repaying the share application money, the exchange ratio on the scheme being approved as referred to in clause 5(a) of the scheme would require suitable amendment. In this connection, Mr. Pavan S. Godiawala ld. advocate on behalf of petitioner company has submitted that company has repaid the share application money, however,

wishes of the share holders of both the companies namely transferor and transferee company was that the share exchange ratio should be kept intact even after the repayment and hence considering the wishes and wisdom of share holders of both the companies, it is not necessary to direct for amendment of clause 5(a) of the scheme. The Regional Director has further observed that neither the scheme nor the petition of transferor company has a clause/prayer for its dissolution without winding up in the event the scheme being approved by this court. It has, therefore, been suggested that the transferor company has to amend the petition/scheme. In this connection, Mr. Godiawala has submitted that the provision of sec. 394(1) (b)Iv) of the Companies Act, 1956 is amply clear. It states that where an application is made to the court under sec. 391 for the sanctioning of a compromise or arrangement proposed between a company and any persons as are mentioned in that section, and it is shown to the Court :(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies; and (b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor comapny") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters:(iv) the dissolution, without winding up of any transferor company in light of the clear provision of the law, it is not necessary to incorporate the clause of dissolution of the transferor company either in the petition or in the Scheme and therefore the amendment sought in the report is not necessary. The petitioner transferor company is ordered to be dissolved without winding up.

5. The ld. Official Liquidator pursuant to the notice, has also produced his report dated 15.12.2004, which was taken on record. The said report relies upon the query 7.4 pertaining to maintenance of books of accounts statutory books and records posed by the Chartered Accountant in its report produced at Annexure-A. The said query is given at Annexure-B to the report of the Chartered Accountant, wherein, the Chartered Accountant is not in position to express opinion whether consumption of raw material matches with the production of the goods manufactured as the company has not maintained raw material consumption records

moreover the datas relating to the value of the raw materials consumed giving item-wise break up and indicating the quantities thereof have not been shown by way of the additional information pursuant to the provisions of paragraph 3 of schedule -VI of the Companies Act, 1956 in the Audit Report. It is submitted by the advocate for the petitioner company that the transferor and transferee companies are regularly maintaining the books of accounts and statutory records and further have never flouted with the laws, and have assisted through out the detailed scrutiny made by the Chartered Accountant of the Official Liquidator. The said query is misplaced as the petitioner -company is exempted company under the Provisions of the Central Excise Act, 1944; and there are no statutory requirement under the provisions of law to maintain a Raw Material consumption records." The petitioner company is engages a business of twisted yarn and sizing and therefore the remark about the Raw Material Consumption Records is misplaced. The Chartered Accountant in his report also points out that they are unable to compare the cost with the prevailing market prices of the labour job done for M/s. High Tech Weaves (India) Pvt. Ltd. the transferee Company year wise break-up of Labour Job Works done for High Tech Weaves (India) Pvt. Ltd. shown in his report, and the Chartered Accountant further mentions that, the company has not maintained the cost Records as it is not prescribed by the Central Government and therefore not able to compare the cost. The said remarks/observation itself answers the observation. The report further states that "No records have been maintained by the Company for sales and disposal of realizable Scrap." The ld. advocate for the petitioner states that the company is engaged in the business of twisted yarn and sizing and therefore there is no question of scrap and therefore the said observation is completely misplaced.

6. It is fairly submitted that the business of both the companies are neither prejudicial nor detrimental to the share holders, creditors, revenue authorities and public at large. Looking to the totality of the facts and the report filed by the Regional Director and the Official Liquidator, there are no discrepancies in the working of the petitioner company nor if the proposed scheme is sanctioned would cause any harm to the interest of the share holders and creditors of both the transferor and transferee companies, further, the said scheme is not prejudicial or fraud on the exchequer/revenue. There are no other remakrs/observation apart from the above. The said remarks are sufficiently answered. It was also submitted by the ld. advocate for the petitioner company

that there are no objections from any concern pursuant to the public advertisement. Even the report of the Official Liquidator apart from the single observation raised by the Chartered Accountant, has not raised any remarks to the working of the company prejudicial to any concern and the report itself contends that, "subject to their observations/remark at point No. 7.4(a), they are of the opinion that the acts and transactions of the company were conducted within the object mentioned in the Memorandum of Association of the Company and that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to the public at large." The said remarks are sufficiently dealt with. The remarks made in the Regional Director's report are also sufficiently dealt with, and there are no objections to the Scheme of the Amalgamation and therefore it is necessary and in the interest of the all concerns, the Scheme is required to be sanctioned.

7. After having heard Mr. Pavan Godiawala ld. advocate for the petitioner company, Mr.JM Manlkan ld. Sr. Standing Counsel for the Central Govt. and the OL and after having gone through the petition as well as the scheme, I am of the view that the amalgamation is in the interest of both the companies namely transferor and transferee company as well as members and the creditors. I, therefore, grant the prayer made by the petition in Para-15(a) of the petition.

8. This petition is disposed of accordingly. So far as the costs to be paid to the ld. Sr. Central Govt. Standing Counsel is concerned, I quantify the same at Rs. 3500/-. The same may be paid to Mr. J.M. Malkan ld. Sr. Central Govt. Standing Counsel for the Central Government.

(K.A. PUJ, J.)

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